

October 23, 2019

Mr. Matthew Wright  
Wright Environmental & Land Services, LLC  
2770 Black Rock Road  
Hanover, PA 17331

Re: Morris Property – 8000 Dogwood Road  
Forest Conservation Variance  
Tracking #04-19-3090

Dear Mr. Wright:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on October 17, 2019. If granted, the variance would allow impact to three (3) specimen trees in order to construct a single-family dwelling on the subject property. The 4.7-acre property is almost entirely forested and is currently unimproved except for two sheds in disrepair. The specimen trees to be impacted are two 34-inch diameter-at-breast-height (DBH) tulip poplars and one 30-inch DBH tulip poplar, all in fair condition. Two of the trees to be impacted may not require removal but will be located within the proposed septic reserve area. Eight other specimen trees exist on or near the property that will not be impacted by the proposed development.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct a single-family dwelling on the lot. While it might have been possible to redesign the development plan so that no specimen trees were impacted by either the dwelling or its septic reserve area, the distribution of the specimen trees on the site would make a different design with no specimen tree impact very difficult. This is especially true given the several areas of

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steep slopes that exist on the site and that the Forest Buffer Easement required for compliance with the Law for the Protection of Water Quality, Streams, Wetlands, and Floodplains encompasses over 1.0 acre of the 4.7 acre lot. Consequently, full compliance with Forest Conservation Law would deny the petitioner all beneficial use of the property, and we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the distribution of specimen trees on the property relative to its limited buildable area rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of heavily wooded properties with some low-density single family dwellings. Given that the site will still remain primarily wooded with only the addition of one new dwelling, we find that granting this variance will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any streams, wetlands, floodplains, or associated buffers. A Forest Buffer and Forest Conservation Easement will be recorded to protect Dogwood Run and its buffer, which runs through the southeastern corner of the property, across the road from the part of the parcel where the dwelling is proposed. Moreover, all sediment and erosion control best management practices will be utilized during construction. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although three specimen trees are to be impacted, eight other specimen trees will remain on or near the property. In addition, 2.7 acres of forest will be protected in a combination of Forest Conservation

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Easements and Forest Buffer & Forest Conservation Easements, meeting the break-even point. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. The following note on all subsequent plans for this development project:

“A variance was granted on October 23, 2019 by Baltimore County Dept. of Environmental Protection and Sustainability to remove three specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met, including the retention of eight other specimen trees onsite, meeting the break-even point of forest retention, and paying a fee in lieu of mitigation.”

2. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County's Forest Conservation Law.
3. Mitigation for the removal of one of the 34-inch DBH tulip poplars is not required, given its location within forest to be mitigated in accordance with Sections 33-6-111 and 33-6-112 of the Forest Conservation Law. Mitigation for the other 34-inch DBH tulip poplar is \$1,122.98, and mitigation for the 30-inch DBH tulip poplar is \$874.29. The resultant \$1,997.27 total fee-in-lieu of mitigation shall be paid to EPS prior to approval of any permit. Checks must be made payable to Baltimore County.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

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If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Director

DVL/lbe

- c. Mr. Ed Levandusky, Caruso Homes  
Mr. & Mrs. Tony and Lisa Morris, Property Owners  
Mr. David Copeland, D.S. Thaler & Associates  
Ms. Marian Honeczy, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

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Owner's Signature

Date

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Printed Name